IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 229 of 2003
With
LETTERS PATENT APPEALS No. 230 and 231 of 2003
in
SPECIAL CIVIL APPLICATION No 1179, 1180 & 1183 of 2002
With
CIVIL APPLICATIONS No. 1594, 1596 and 1597 of 2003.
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For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARAGBHAI BHAGWANDAS PATEL & Ors.

Versus

STATE OF GUJARAT & Ors.

Appearance:

1. LETTERS PATENT APPEAL No. 229 of 2003
MR RK MISHRA for Appellant No.
Mrs. Manisha Lavkumar Shah/Mr. Nagesh Sood, AGP for State.
MR HS MUNSHAW for Respondent No. 2

NOTICE SERVED BY DS for Respondent No. 3

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE K.A.PUJ

Date of decision: 05/05/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

Notice for Final Hearing was issued by this Court earlier. All the three appeals are taken up for Final Hearing at the joint request of the parties and hence they are being finally disposed of by this common judgment. This group of three Letters Patent Appeals is filed by the appellants, original-petitioners against the common order of the learned Single Judge passed on 11/17.12.2002 in Special Civil Applications No. 1179, 1180 and 1183 of 2002, whereby the learned Single Judge has dismissed all the three petitions of the appellants, original-petitioners.

2. The appellants, original-petitioners, had sought for in their respective petitions, a declaration to the effect that the length of 9 years' continuous service of having borne in the department is the criteria in order to become eligible in a higher scale grade and accordingly the petitioners should not be deprived of the benefit of higher pay-scale grade only on the ground that the petitioners were transferred to some other place. It was the submission of learned advocate Mr. RK Mishra appearing for the petitioners before the learned Single Judge that the higher grade scale is being granted to the Government servants to mitigate stagnation suffered by them on account of lack of promotional avenues. It was submitted that the scheme envisages grant of higher grade scale on completion of 9 years' service in the same cadre, that is on the same post and while calculating 9 years' service the total service rendered by the concerned petitioner should be taken into account and it was further submitted that the inter-district transfer is a mere fortuitous circumstance and it should not deprive the petitioners of the benefit of higher grade scale on completion of 9 years' service in the same cadre. Reliance was placed on behalf of the petitioners in the case of Vishnuprasad C. Darji & Anr. v. Registrar, High Court of Gujarat & Ors. - [2000(2) GLR 1138], and in the case of Ajitsinh Chaturji Rathod v. State of Gujarat & Ors. - [2000 (4) GLR 3181] and also the

Judgment of the Hon'ble Supreme Court in the case of Union of India & Anr. v. K.T. Shastri [AIR 1990 SC 598]. However, there was some mistake in giving citation in so far as the Supreme Court decision is concerned and hence the petitioners moved Note for Speaking to Minutes stating that reliance was not placed on the decision of the Hon'ble Supreme Court in the case of Union of India vs. K. Shastri [AIR 1990 SC 598], but it was on the case of Dwijen Chandra Sarkar & Anr. v. Union of India & Anr. [AIR 1999 SC 598].

3. After considering the facts and circumstances of each case, and the authorities cited by the petitioners, the learned Single Judge has taken the view that the distinctive fact is that in cases before hand the petitioners were transferred to the District Primary Education Committee, Mehsana at their own request, and the scheme in question, unlike the Circular of the P & T Department in the Judgment by the Supreme Court, specifically excludes clubbing of two services - one rendered prior to the transfer and the one rendered after the transfer for the purpose of computing the length of service for grant of higher grade scale, and hence the said judgment shall not render any assistance to the petitioners. The petitions were, therefore, dismissed by the learned Single Judge.

4. It is this order, which is under challenge in the present Letters Patent Appeal before this Court.

5. Heard Mr. RK Mishra, learned advocate appearing for the appellants, Mr. HS Munshaw, learned advocate appearing for the respondent No.2, and Mrs. Manisha Lavkumar Shah/Mr. Nagesh Sood, learned AGPs appearing for the State in these Letters Patent Appeals. It is submitted by Mr. Mishra that the appellants' case is not of seniority and promotion adversely affecting somebody's right monetarily earned of the status by means of promotion. He has further submitted that the learned Single Judge has not correctly appreciated the decision relied upon by the appellants of the learned Single Judge in Special Civil Application No. 1367 of 1999 which came to be upheld by the Division Bench of this Court in LPA No. 779 of 2000. He has further submitted that the distinction made by the learned Single Judge in so far as the judgment of the Hon'ble Supreme Court in the case of Dwijen Chandra Sarkar (Supra) is also without any difference. He has further submitted that the cadre of the appellants remains the same all throughout and they are serving in the same cadre as they have born in their respective cadres. Mr. Mishra has further relied on

another judgment of the Division Bench of this Court in LPA No. 91 of 2003 decided on 27-1-2003, wherein after referring to and following the judgment of the Hon'ble Supreme Court in Dwijen Chandra Sarkar (Supra), this Court has held "that the principle of computation of length of service for eligibility under such scheme has been lucidly expounded and it has been held that the past service is to be reckoned for the limited purpose of eligibility for computing the number of years of qualifying service, so as to claim the higher grade under the scheme of time bound promotion.

6. On the other hand, Mr. Munshaw, the learned advocate appearing for the respondent No.2 and the learned Assistant Government Pleaders have supported the order passed by the learned Single Judge and emphatically stated that since in the present case the transfers were made because of the request made by the appellants the services which they have put at their original place cannot be counted for the purpose of higher scale grade and looking to the scheme, the clubbing is not permissible even for granting higher grade scale.

7. After having heard the learned advocates appearing for the parties and after examining and evaluating the factual profile of the entire matter and also after having considered the authorities cited before us, we are of the view that the order, passed by the learned Single Judge, requires an interference by us while exercising appellate jurisdiction under Clause 15 of Letters Patent. The Hon'ble Supreme Court has, in the case of Dwijen Chandra Sarkar (Supra), specifically held "that the past service of the appellants is to be reckoned for the limited purpose of eligibility computing the number of years of qualifying service, to enable them to claim the higher grade under the scheme of time bound promotions. The Hon'ble Supreme Court has further held that the appellants will be entitled to the higher grade from the date on which they have completed 16 years computing the same by taking into account their past service in the Rehabilitation Department also along with the service in the P & T Department. They will be so entitled as long as they remained in the post of Assistant and till their normal promotion to a higher post according to Rules." Even the Division Bench of this Court in the case of State of Gujarat vs. Ajitsinh Chaturji Rathod - LPA No. 779 of 2000, decided on 4.12.2000, has taken the view that "mere transfer from Surat to Mehsana on the condition to be at the bottom, at the new station, upon request, would not, in any way, adversely affect the right to claim benefit of higher

grade under the relevant G.R." In our view, the learned Single Judge is, therefore, not right in holding that for conferring of benefit of higher grade scale on completion of 9 years' service, the service rendered in Mehsana District Panchayat alone can be considered. This view is contrary to the view taken by the Hon'ble Supreme Court, in the case of Dwijen Chandra Sarkar (Supra), and the Division Bench judgment of this Court in the case of State of Gujarat vs. Ajitsinh Chaturji Rathod (Supra).

8. In the result, all these three Letters Patent Appeals are allowed. The order passed by the learned Single Judge, in all the three petitions, is hereby quashed and set aside. and the earlier order of the respondent-authorities, granting higher grade scale to the appellants - original-petitioners, is hereby restored. However, looking to the facts and circumstances of the case, there shall be no order as to costs.

9. In view of the order passed in the Letters Patent Appeals, there shall be no orders on the Civil Applications which stand disposed of accordingly.

[J.N. Bhatt, Actg. C.J.]

rmr. [K.A. Puj, J.]